

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 533

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO BORDER AFFAIRS; AMENDING THE BORDER DEVELOPMENT ACT
TO PROVIDE MORE AUTONOMY TO THE BORDER AUTHORITY AND TO
CLARIFY THE DUTIES AND AUTHORITY OF THE BORDER AUTHORITY;
AMENDING SECTIONS AND REPEALING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-27-4 NMSA 1978 (being Laws 1991,
Chapter 131, Section 4, as amended) is amended to read:

"58-27-4. BORDER AUTHORITY CREATED-- MEMBERSHIP. --

A. The "border authority" is created. The
authority is a state agency [as defined in Section 6-3-1 NMSA
1978. It shall be] and is administratively attached to the
economic development department. [It shall be subject to the
same laws, regulations and administrative and budgetary
controls that apply to a department in the executive branch of

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1 ~~state government created pursuant to the Executive~~
2 ~~Reorganization Act, including but not limited to the Audit Act,~~
3 ~~the Per Diem and Mileage Act, the Procurement Code, the Public~~
4 ~~Employees Retirement Act, the Open Meetings Act and the Public~~
5 ~~Records Act.]~~

6 B. The authority [~~shall consist~~] consists of seven
7 voting members, six of whom shall be appointed by the governor
8 [~~of which~~]. No more than three of those appointed shall belong
9 to the same political party [~~and~~]. The seventh member shall be
10 the secretary of [~~the~~] economic development [~~department~~] or the
11 secretary's designee. The voting members appointed by the
12 governor shall be confirmed by the [~~state~~] senate. The
13 lieutenant governor shall serve as a nonvoting ex-officio
14 member. The [~~chairman~~] chair may appoint a nonvoting advisory
15 committee to provide advice and recommendations on authority
16 matters.

17 C. The six voting members of the authority
18 appointed by the governor shall be citizens of the state and
19 shall serve for terms of four years except for the initial
20 appointees who shall be appointed so that the terms are
21 staggered after initial appointment. Initial appointees shall
22 serve terms as follows: two members for two years, two members
23 for three years and two members for four years."

24 Section 2. Section 58-27-10 NMSA 1978 (being Laws 1991,
25 Chapter 131, Section 10, as amended) is amended to read:

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1 "58-27-10. POWERS AND DUTIES OF AUTHORITY. --

2 A. The authority shall:

3 (1) advise the governor and his staff and the
4 New Mexico finance authority oversight committee on methods,
5 proposals, programs and initiatives involving the New
6 Mexico-Chihuahua border area that may further stimulate the
7 border economy and provide additional employment opportunities
8 for New Mexico citizens;

9 (2) subject to the provisions of the Border
10 Development Act, initiate, develop, acquire, own, construct and
11 maintain border development projects;

12 (3) create programs to expand economic
13 opportunities beyond the New Mexico-Chihuahua border area to
14 other areas of the state;

15 (4) create avenues of communication between
16 New Mexico and Chihuahua and the Republic of Mexico concerning
17 economic development, trade and commerce, transportation and
18 industrial affairs;

19 (5) promote legislation that will further the
20 goals of the authority and development of the border region;

21 (6) produce or cause to have produced
22 promotional literature related to explanation and fulfillment
23 of the authority's goals;

24 (7) actively recruit industries and establish
25 programs that will result in the location and relocation of new

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1 industries in the state;

2 (8) coordinate and expedite the involvement of
3 the executive department's border area efforts; and

4 (9) perform or cause to be performed
5 environmental, transportation, ~~communication~~, land use and
6 other technical studies necessary or advisable for projects or
7 programs or to secure port-of-entry approval by the United
8 States and the Mexican governments and other appropriate
9 governmental agencies.

10 B. The authority [~~shall be authorized to also~~] may:

11 (1) solicit and accept federal, state, local
12 and private grants of funds, property or financial or other aid
13 in any form for the purpose of carrying out the provisions of
14 the Border Development Act;

15 (2) adopt [~~regulations~~] rules governing the
16 manner in which its business [~~shall be~~] is transacted and the
17 manner in which the powers of the authority [~~shall be~~] are
18 exercised and its duties performed;

19 (3) act as an applicant for and operator of
20 port-of-entry facilities and, as the applicant, carry out all
21 tasks and functions, including acquisition by purchase or gift
22 of any real property necessary for port-of-entry facilities,
23 acquisition by purchase, gift or construction of any facilities
24 or other real or personal property necessary for a port of
25 entry and filing all necessary documents and follow-up of such

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1 filings with appropriate agencies; [~~and~~]

2 (4) as part of a port of entry, give or
3 transfer real property, facilities and improvements owned by
4 the authority to the United States government;

5 (5) acquire by construction, purchase, gift or
6 lease projects that shall be located within the state;

7 (6) sell, lease or otherwise dispose of a
8 project upon terms and conditions acceptable to the authority
9 and in the best interests of the state;

10 (7) issue revenue bonds and borrow money for
11 the purpose of defraying the cost of acquiring a project by
12 purchase or construction and to secure the payment of the bonds
13 or repayment of a loan; and

14 (8) refinance a project.

15 C. In exercising its authority, the authority shall
16 not:

17 (1) operate a project as a business or in any
18 manner except as lessor;

19 (2) incur debt as a general obligation of the
20 state or pledge the full faith and credit of the state to repay
21 debt; or

22 (3) expend funds or incur debt for the
23 improvement, maintenance, repair or addition to property not
24 owned by the authority. "

25 Section 3. Section 58-27-14 NMSA 1978 (being Laws 1991,

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1 Chapter 131, Section 14, as amended) is amended to read:

2 "58-27-14. AUTHORITY FEES AND CHARGES. -- [~~Under such terms~~
3 ~~and conditions as may be prescribed]~~ Unless prohibited by law,
4 the authority may fix, alter, charge and collect tolls, fees or
5 rentals and may impose any other charges for the use of or for
6 services rendered by any authority facility, program or
7 service. "

8 Section 4. Section 58-27-16 NMSA 1978 (being Laws 1991,
9 Chapter 131, Section 16, as amended) is amended to read:

10 "58-27-16. AUTHORITY REVENUE BONDS--TERMS. --

11 A. Authority revenue bonds:

12 [~~A.-]~~ (1) may have interest, appreciated
13 principal value or any part thereof payable at intervals [~~as~~
14 ~~may be]~~ determined by the authority;

15 [~~B.-]~~ (2) may be subject to prior redemption or
16 mandatory redemption at the authority's option at [~~such]~~ the
17 time and upon [~~such]~~ the terms and conditions with or without
18 the payment of [~~such]~~ a premium as may be provided by
19 resolution of the authority;

20 [~~C.-]~~ (3) may mature at any time not exceeding
21 thirty years after the date of issuance;

22 [~~D.-]~~ (4) may be serial in form and maturity or
23 may consist of one or more bonds payable at one time or in
24 installments or may be in such other form as [~~may be]~~
25 determined by the authority;

1 ~~[E-]~~ (5) may be in registered or bearer form
 2 or in book entry form through the facilities of a securities
 3 depository either as to principal or interest or both;

4 ~~[F-]~~ (6) shall be sold for cash at, above or
 5 below par and at a price that results in a net effective
 6 interest rate that conforms to the Public Securities Act; and

7 ~~[G-]~~ (7) may be sold at public or negotiated
 8 sale. [~~and~~

9 ~~H-]~~ B. Subject to the approval of the state board
 10 of finance, the authority may enter into other financial
 11 arrangements if [~~the authority~~] it determines that the
 12 arrangements will assist the authority [~~in more effectively~~
 13 ~~managing its interest costs or in more effectively managing its~~
 14 ~~interest rate exposure~~]. "

15 Section 5. Section 58-27-16.1 NMSA 1978 (being Laws 1993,
 16 Chapter 335, Section 4, as amended) is amended to read:

17 "58-27-16.1. AUTHORITY LOANS--TERMS.--If the authority
 18 borrows money from a financial institution or other entity:

19 A. the interest, principal payments or any part
 20 thereof shall be payable at intervals as may be determined by
 21 the authority;

22 B. the loan shall mature at any time not exceeding
 23 thirty years from the date of origination;

24 C. the principal amount of the loan shall not
 25 exceed the fair market value of the real or personal property

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1 to be acquired with the proceeds of the loan as evidenced by a
2 certified appraisal in accordance with the Real Estate
3 Appraisers Act; and

4 D. the loan shall be subject to the approval of the
5 state board of finance. "

6 Section 6. Section 58-27-19 NMSA 1978 (being Laws 1991,
7 Chapter 131, Section 19, as amended) is amended to read:

8 "58-27-19. REQUIREMENTS RESPECTING RESOLUTION AND
9 LEASE. --

10 A. Prior to approving a resolution for the issuance
11 of bonds or the closing of a loan for any project, the
12 authority shall determine and find the following in the
13 resolution approving the issuance of the bonds or the closing
14 of the loan:

15 (1) if the resolution is for the issuance of
16 bonds, the principal and interest of the bonds to be issued
17 shall be fully secured by a lease agreement or installment sale
18 agreement executed by an agency of the United States
19 government, by [~~any~~] a state or local public agency or
20 institution, by a corporation organized and operating within
21 the United States, that corporation or the long-term debt of
22 that corporation being rated not less than "A" by a national
23 rating service, or by an irrevocable letter of credit issued by
24 a chartered financial institution approved for this purpose by
25 the state board of finance or by a bond insurance policy issued

1 by an insurance company rated not less than "AA" by a national
 2 rating service;

3 (2) the amount necessary in each year to pay
 4 the principal of and the interest on the bonds proposed to be
 5 issued or the loan proposed to be obtained to finance the
 6 project; and

7 (3) the amount necessary to be paid each year
 8 into any reserve funds that the governing body may deem
 9 advisable to establish in connection with the retirement of the
 10 proposed bonds or the repayment of the loan and, in either
 11 case, the maintenance of the project. Unless the terms under
 12 which the project is to be leased or sold provide that the
 13 lessee or purchaser shall maintain the project and carry all
 14 proper insurance with respect ~~[thereto]~~ to the project, the
 15 resolution shall set forth the estimated cost of maintaining
 16 the project in good repair and keeping it properly insured.

17 B. If the resolution is for the issuance of bonds,
 18 the determinations and findings of the authority required to be
 19 made by this section shall be set forth in the proceedings
 20 under which the proposed bonds are to be issued.

21 C. Prior to the issuance of the bonds or the
 22 closing of the loan, the authority may lease or sell the
 23 project to a lessee or purchaser under an agreement conditioned
 24 upon completion of the project and providing for payment to the
 25 authority of such rentals or payments as, upon the basis of

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1 [such] determinations and findings pursuant to provisions of
2 Subsection A of this section, will be sufficient to:

3 (1) pay the principal of and interest on the
4 bonds issued or on the loan to be obtained to finance the
5 project;

6 (2) build up and maintain any reserve deemed
7 by the authority to be advisable in connection with the
8 financing of the project; and

9 (3) pay the costs of maintaining the project
10 in good repair and keeping it properly insured, unless the
11 agreement of lease obligates the lessee to pay for the
12 maintenance and insurance of the project.

13 D. With prior approval of the state board of
14 finance, the authority may borrow funds to purchase, lease,
15 acquire or develop water rights, a water system or a wastewater
16 collection and treatment system, provided the authority does
17 not obligate itself or the state to any debt or obligation that
18 cannot be paid from ~~[funds]~~ revenues derived from the project.

19 E. Upon prior approval of the state board of
20 finance, the authority may obtain a commitment from a financial
21 institution to borrow ~~[funds]~~ money; provided that closing of
22 the loan and disbursement of the proceeds is conditional upon
23 compliance with the requirements of the Border Development Act.
24 Nothing in this section shall be deemed to authorize the
25 authority to incur any debt obligation of the authority in

1 connection with a loan commitment prior to the closing of the
2 loan. "

3 Section 7. REPEAL. -- Section 58-27-11 NMSA 1978 (being
4 Laws 1991, Chapter 131, Section 11, as amended) is repealed.

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